

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 963

1 AN ACT TO AMEND SECTIONS 41-29-139, 41-29-150, 47-7-33 AND
2 99-19-25, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN
3 NONVIOLENT FIRST-TIME OFFENDERS SHALL BE SENTENCED TO
4 REHABILITATION FOR DRUG AND ALCOHOL OFFENSES; TO BRING FORWARD
5 SECTION 63-11-30, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF
6 AMENDMENT; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** Section 41-29-139, Mississippi Code of 1972, is
9 amended as follows:

10 41-29-139. (a) Except as authorized by this article, it is
11 unlawful for any person knowingly or intentionally:

12 (1) To sell, barter, transfer, manufacture, distribute,
13 dispense or possess with intent to sell, barter, transfer,
14 manufacture, distribute or dispense, a controlled substance; or

15 (2) To create, sell, barter, transfer, distribute,
16 dispense or possess with intent to create, sell, barter, transfer,
17 distribute or dispense, a counterfeit substance.

18 (b) Except as otherwise provided in subsections (f), (g) and
19 (h) of this section or in Section 41-29-142, any person who
20 violates subsection (a) of this section shall be sentenced as
21 follows:

22 (1) In the case of controlled substances classified in
23 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
24 except thirty (30) grams or less of marihuana, and except a first
25 offender as defined in Section 41-29-149(e) who violates
26 subsection (a) of this section with respect to less than one (1)
27 kilogram but more than thirty (30) grams of marihuana, such person
28 may, upon conviction, be imprisoned for not more than thirty (30)
29 years and shall be fined not less than Five Thousand Dollars

30 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or
31 both;

32 (2) In the case of a first offender who violates
33 subsection (a) of this section with an amount less than one (1)
34 kilogram but more than thirty (30) grams of marihuana as
35 classified in Schedule I, as set out in Section 41-29-113, such
36 person is guilty of a felony and upon conviction may be imprisoned
37 for not more than twenty (20) years or fined not more than Thirty
38 Thousand Dollars (\$30,000.00), or both;

39 (3) In the case of thirty (30) grams or less of
40 marihuana, such person may, upon conviction, be imprisoned for not
41 more than three (3) years or fined not more than Three Thousand
42 Dollars (\$3,000.00), or both;

43 (4) In the case of controlled substances classified in
44 Schedules III and IV, as set out in Sections 41-29-117 and
45 41-29-119, such person may, upon conviction, be imprisoned for not
46 more than twenty (20) years and shall be fined not less than One
47 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty
48 Thousand Dollars (\$250,000.00), or both; and

49 (5) In the case of controlled substances classified in
50 Schedule V, as set out in Section 41-29-121, such person may, upon
51 conviction, be imprisoned for not more than ten (10) years and
52 shall be fined not less than One Thousand Dollars (\$1,000.00) nor
53 more than Fifty Thousand Dollars (\$50,000.00), or both.

54 (c) It is unlawful for any person knowingly or intentionally
55 to possess any controlled substance unless the substance was
56 obtained directly from, or pursuant to, a valid prescription or
57 order of a practitioner while acting in the course of his
58 professional practice, or except as otherwise authorized by this
59 article. The penalties for any violation of this subsection (c)
60 with respect to a controlled substance classified in Schedules I,
61 II, III, IV or V, as set out in Section 41-29-113, 41-29-115,
62 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be

63 based on dosage unit as defined herein or the weight of the
64 controlled substance as set forth herein as appropriate:

65 "Dosage unit (d.u.)" means a tablet or capsule, or in the
66 case of a liquid solution, one (1) milliliter. In the case of
67 lysergic acid diethylamide (LSD) the term, "dosage unit" means a
68 stamp, square, dot, microdot, tablet or capsule of a controlled
69 substance.

70 For any controlled substance that does not fall within the
71 definition of the term "dosage unit," the penalties shall be based
72 upon the weight of the controlled substance.

73 The weight set forth refers to the entire weight of any
74 mixture or substance containing a detectable amount of the
75 controlled substance.

76 If a mixture or substance contains more than one (1)
77 controlled substance, the weight of the mixture or substance is
78 assigned to the controlled substance that results in the greater
79 punishment.

80 Any person who violates this subsection with respect to:

81 (1) A controlled substance classified in Schedule I or
82 II, except marihuana, in the following amounts shall be charged
83 and sentenced as follows:

84 (A) Less than one-tenth (0.1) gram or one (1)
85 dosage unit or less may be charged as a misdemeanor or felony. If
86 charged by indictment as a felony: by imprisonment not less than
87 one (1) nor more than four (4) years and a fine not more than Ten
88 Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by
89 imprisonment for up to one (1) year and a fine not more than One
90 Thousand Dollars (\$1,000.00).

91 (B) One-tenth (0.1) gram but less than two (2)
92 grams or two (2) dosage units but less than ten (10) dosage units,
93 by imprisonment for not less than two (2) years nor more than
94 eight (8) years and a fine of not more than Fifty Thousand Dollars
95 (\$50,000.00).

96 (C) Two (2) grams but less than ten (10) grams or
97 ten (10) dosage units but less than twenty (20) dosage units, by
98 imprisonment for not less than four (4) years nor more than
99 sixteen (16) years and a fine of not more than Two Hundred Fifty
100 Thousand Dollars (\$250,000.00).

101 (D) Ten (10) grams but less than thirty (30) grams
102 or twenty (20) dosage units but not more than forty (40) dosage
103 units, by imprisonment for not less than six (6) years nor more
104 than twenty-four (24) years and a fine of not more than Five
105 Hundred Thousand Dollars (\$500,000.00).

106 (E) Thirty (30) grams or more or forty (40) dosage
107 units or more, by imprisonment for not less than ten (10) years
108 nor more than thirty (30) years and a fine of not more than One
109 Million Dollars (\$1,000,000.00).

110 (2) Marihuana in the following amounts shall be charged
111 and sentenced as follows:

112 (A) Thirty (30) grams or less by a fine of not
113 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
114 Fifty Dollars (\$250.00). The provisions of this paragraph shall
115 be enforceable by summons, provided the offender provides proof of
116 identity satisfactory to the arresting officer and gives written
117 promise to appear in court satisfactory to the arresting officer,
118 as directed by the summons. A second conviction under this
119 section within two (2) years shall be punished by a fine of Two
120 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
121 nor more than sixty (60) days in the county jail and mandatory
122 participation in a drug education program, approved by the
123 Division of Alcohol and Drug Abuse of the State Department of
124 Mental Health, unless the court enters a written finding that such
125 drug education program is inappropriate. A third or subsequent
126 conviction under this section within two (2) years is a
127 misdemeanor punishable by a fine of not less than Two Hundred
128 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars

129 (\$500.00) and confinement for not less than five (5) days nor more
130 than six (6) months in the county jail. Upon a first or second
131 conviction under this section, the courts shall forward a report
132 of such conviction to the Mississippi Bureau of Narcotics which
133 shall make and maintain a private, nonpublic record for a period
134 not to exceed two (2) years from the date of conviction. The
135 private, nonpublic record shall be solely for the use of the
136 courts in determining the penalties which attach upon conviction
137 under this section and shall not constitute a criminal record for
138 the purpose of private or administrative inquiry and the record of
139 each conviction shall be expunged at the end of the period of two
140 (2) years following the date of such conviction;

141 (B) Additionally, a person who is the operator of
142 a motor vehicle, who possesses on his person or knowingly keeps or
143 allows to be kept in a motor vehicle within the area of the
144 vehicle normally occupied by the driver or passengers, more than
145 one (1) gram, but not more than thirty (30) grams, of marihuana is
146 guilty of a misdemeanor and upon conviction may be fined not more
147 than One Thousand Dollars (\$1,000.00) and confined for not more
148 than ninety (90) days in the county jail. For the purposes of
149 this subsection, such area of the vehicle shall not include the
150 trunk of the motor vehicle or the areas not normally occupied by
151 the driver or passengers if the vehicle is not equipped with a
152 trunk. A utility or glove compartment shall be deemed to be
153 within the area occupied by the driver and passengers;

154 (C) More than thirty (30) grams but less than two
155 hundred fifty (250) grams may be fined not more than One Thousand
156 Dollars (\$1,000.00), or confined in the county jail for not more
157 than one (1) year, or both; or fined not more than Three Thousand
158 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for
159 not more than three (3) years, or both;

160 (D) Two hundred fifty (250) grams but less than
161 five hundred (500) grams, by imprisonment for not less than two

162 (2) years nor more than eight (8) years and by a fine of not more
163 than Fifty Thousand Dollars (\$50,000.00);

164 (E) Five hundred (500) grams but less than one (1)
165 kilogram, by imprisonment for not less than four (4) years nor
166 more than sixteen (16) years and a fine of less than Two Hundred
167 Fifty Thousand Dollars (\$250,000.00);

168 (F) One (1) kilogram but less than five (5)
169 kilograms, by imprisonment for not less than six (6) years nor
170 more than twenty-four (24) years and a fine of not more than Five
171 Hundred Thousand Dollars (\$500,000.00);

172 (G) Five (5) kilograms or more, by imprisonment
173 for not less than ten (10) years nor more than thirty (30) years
174 and a fine of not more than One Million Dollars (\$1,000,000.00).

175 (3) A controlled substance classified in Schedule III,
176 IV or V as set out in Sections 41-29-117 through 41-29-121, upon
177 conviction, may be punished as follows:

178 (A) Less than fifty (50) grams or less than one
179 hundred (100) dosage units is a misdemeanor and punishable by not
180 more than one (1) year and a fine of not more than One Thousand
181 Dollars (\$1,000.00).

182 (B) Fifty (50) grams but less than one hundred
183 fifty (150) grams or one hundred (100) dosage units but less than
184 five hundred (500) dosage units, by imprisonment for not less than
185 one (1) year nor more than four (4) years and a fine of not more
186 than Ten Thousand Dollars (\$10,000.00).

187 (C) One hundred fifty (150) grams but less than
188 three hundred (300) grams or five hundred (500) dosage units but
189 less than one thousand (1,000) dosage units, by imprisonment for
190 not less than two (2) years nor more than eight (8) years and a
191 fine of not more than Fifty Thousand Dollars (\$50,000.00).

192 (D) Three hundred (300) grams but less than five
193 hundred (500) grams or one thousand (1,000) dosage units but less
194 than two thousand five hundred (2,500) dosage units, by

195 imprisonment for not less than four (4) years nor more than
196 sixteen (16) years and a fine of not more than Two Hundred Fifty
197 Thousand Dollars (\$250,000.00).

198 (E) Five hundred (500) grams or more or two
199 thousand five hundred (2,500) dosage units or more, by
200 imprisonment for not less than six (6) years nor more than
201 twenty-four (24) years and a fine of not more than Five Hundred
202 Thousand Dollars (\$500,000.00).

203 (d) (1) It is unlawful for a person who is not authorized
204 by the State Board of Medical Licensure, State Board of Pharmacy,
205 or other lawful authority to use, or to possess with intent to
206 use, paraphernalia to plant, propagate, cultivate, grow, harvest,
207 manufacture, compound, convert, produce, process, prepare, test,
208 analyze, pack, repack, store, contain, conceal, inject, ingest,
209 inhale or otherwise introduce into the human body a controlled
210 substance in violation of the Uniform Controlled Substances Law.
211 Any person who violates this subsection is guilty of a misdemeanor
212 and upon conviction may be confined in the county jail for not
213 more than six (6) months, or fined not more than Five Hundred
214 Dollars (\$500.00), or both; however, no person shall be charged
215 with a violation of this subsection when such person is also
216 charged with the possession of one (1) ounce or less of marihuana
217 under subsection (c)(2)(A) of this section.

218 (2) It is unlawful for any person to deliver, sell,
219 possess with intent to deliver or sell, or manufacture with intent
220 to deliver or sell, paraphernalia, knowing, or under circumstances
221 where one reasonably should know, that it will be used to plant,
222 propagate, cultivate, grow, harvest, manufacture, compound,
223 convert, produce, process, prepare, test, analyze, pack, repack,
224 store, contain, conceal, inject, ingest, inhale, or otherwise
225 introduce into the human body a controlled substance in violation
226 of the Uniform Controlled Substances Law. Any person who violates
227 this subsection is guilty of a misdemeanor and upon conviction may

228 be confined in the county jail for not more than six (6) months,
229 or fined not more than Five Hundred Dollars (\$500.00), or both.

230 (3) Any person eighteen (18) years of age or over who
231 violates subsection (d)(2) of this section by delivering or
232 selling paraphernalia to a person under eighteen (18) years of age
233 who is at least three (3) years his junior is guilty of a
234 misdemeanor and upon conviction may be confined in the county jail
235 for not more than one (1) year, or fined not more than One
236 Thousand Dollars (\$1,000.00), or both.

237 (4) It is unlawful for any person to place in any
238 newspaper, magazine, handbill, or other publication any
239 advertisement, knowing, or under circumstances where one
240 reasonably should know, that the purpose of the advertisement, in
241 whole or in part, is to promote the sale of objects designed or
242 intended for use as paraphernalia. Any person who violates this
243 subsection is guilty of a misdemeanor and upon conviction may be
244 confined in the county jail for not more than six (6) months, or
245 fined not more than Five Hundred Dollars (\$500.00), or both.

246 (e) It shall be unlawful for any physician practicing
247 medicine in this state to prescribe, dispense or administer any
248 amphetamine or amphetamine-like anorectics and/or central nervous
249 system stimulants classified in Schedule II, pursuant to Section
250 41-29-115, for the exclusive treatment of obesity, weight control
251 or weight loss. Any person who violates this subsection, upon
252 conviction, is guilty of a misdemeanor and may be confined for a
253 period not to exceed six (6) months, or fined not more than One
254 Thousand Dollars (\$1,000.00), or both.

255 (f) Except as otherwise authorized in this article, any
256 person twenty-one (21) years of age or older who knowingly sells,
257 barter, transfers, manufactures, distributes or dispenses during
258 any twelve (12) consecutive month period: (i) ten (10) pounds or
259 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
260 two (2) or more ounces of cocaine or of any mixture containing

261 cocaine as described in Section 41-29-105(s), Mississippi Code of
262 1972; (iv) two (2) or more ounces of methamphetamine; or (v) one
263 hundred (100) or more dosage units of morphine, Demerol, Dilaudid,
264 oxycodone hydrochloride or a derivative thereof, or
265 3,4-methylenedioxymethamphetamine (MDMA) shall be guilty of a
266 felony and, upon conviction thereof, shall be sentenced to life
267 imprisonment and such sentence shall not be reduced or suspended
268 nor shall such person be eligible for probation or parole, the
269 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33,
270 Mississippi Code of 1972, to the contrary notwithstanding. The
271 provisions of this subsection shall not apply to any person who
272 furnishes information and assistance to the bureau or its designee
273 which, in the opinion of the trial judge objectively should or
274 would have aided in the arrest or prosecution of others who
275 violate this subsection. The accused shall have adequate
276 opportunity to develop and make a record of all information and
277 assistance so furnished.

278 (g) (1) Any person trafficking in controlled substances
279 shall be guilty of a felony and upon conviction shall be
280 imprisoned for a term of thirty (30) years and such sentence shall
281 not be reduced or suspended nor shall such person be eligible for
282 probation or parole, the provisions of Sections 41-29-149,
283 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the
284 contrary notwithstanding and shall be fined not less than Five
285 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
286 (\$1,000,000.00).

287 (2) "Trafficking in controlled substances" as used
288 herein means to engage in three (3) or more component offenses
289 within any twelve (12) consecutive month period where at least two
290 (2) of the component offenses occurred in different counties. A
291 component offense is any act which would constitute a violation of
292 subsection (a) of this section. Prior convictions shall not be

293 used as component offenses to establish the charge of trafficking
294 in controlled substances.

295 (3) The charge of trafficking in controlled substances
296 shall be set forth in one (1) count of an indictment with each of
297 the component offenses alleged therein and it may be charged and
298 tried in any county where a component offense occurred. An
299 indictment for trafficking in controlled substances may also be
300 returned by the State Grand Jury of Mississippi provided at least
301 two (2) of the component offenses occurred in different circuit
302 court districts.

303 (h) Any person who is a first offender of subsection
304 (a) of this section which does not involve the sale, distribution,
305 manufacture or other nonpossession offense of controlled
306 substances shall be sentenced to rehabilitation if the court
307 determines that such rehabilitation is in the best interest of the
308 offender.

309 **SECTION 2.** Section 41-29-150, Mississippi Code of 1972, is
310 amended as follows:

311 41-29-150. (a) Except as otherwise provided for first-time
312 nonviolent offenders in Section 41-29-139(h), any person convicted
313 under Section 41-29-139 may be required, in the discretion of the
314 court, as a part of the sentence otherwise imposed, or in lieu of
315 imprisonment in cases of probation or suspension of sentence, to
316 attend a course of instruction conducted by the bureau, the State
317 Board of Health, or any similar agency, on the effects, medically,
318 psychologically and socially, of the misuse of controlled
319 substances. Said course may be conducted at any correctional
320 institution, detention center or hospital, or at any center or
321 treatment facility established for the purpose of education and
322 rehabilitation of those persons committed because of abuse of
323 controlled substances.

324 (b) Any person convicted under Section 41-29-139 who is
325 found to be dependent upon or addicted to any controlled substance

326 shall be required, as a part of the sentence otherwise imposed, or
327 in lieu of imprisonment in cases of parole, probation or
328 suspension of sentence, to receive medical treatment for such
329 dependency or addiction. The regimen of medical treatment may
330 include confinement in a medical facility of any correctional
331 institution, detention center or hospital, or at any center or
332 facility established for treatment of those persons committed
333 because of a dependence or addiction to controlled substances.

334 (c) Those persons previously convicted of a felony under
335 Section 41-29-139 and who are now confined at the Mississippi
336 State Hospital at Whitfield, Mississippi, or at the East
337 Mississippi State Hospital at Meridian, Mississippi, for the term
338 of their sentence shall remain under the jurisdiction of the
339 Mississippi Department of Corrections and shall be required to
340 abide by all reasonable rules and regulations promulgated by the
341 director and staff of said institutions and of the Department of
342 Corrections. Any persons so confined who shall refuse to abide by
343 said rules or who attempt an escape or who shall escape shall be
344 transferred to the State Penitentiary or to a county jail, where
345 appropriate, to serve the remainder of the term of imprisonment;
346 this provision shall not preclude prosecution and conviction for
347 escape from said institutions.

348 (d) (1) If any person who has not previously been convicted
349 of violating Section 41-29-139, or the laws of the United States
350 or of another state relating to narcotic drugs, stimulant or
351 depressant substances, other controlled substances or marihuana is
352 found to be guilty of a violation of subsection (c) or (d) of
353 Section 41-29-139, after trial or upon a plea of guilty, the court
354 may, without entering a judgment of guilty and with the consent of
355 such person, defer further proceedings and place him on probation
356 upon such reasonable conditions as it may require and for such
357 period, not to exceed three (3) years, as the court may prescribe.
358 Upon violation of a condition of the probation, the court may

359 enter an adjudication of guilt and proceed as otherwise provided.
360 The court may, in its discretion, dismiss the proceedings against
361 such person and discharge him from probation before the expiration
362 of the maximum period prescribed for such person's probation. If
363 during the period of his probation such person does not violate
364 any of the conditions of the probation, then upon expiration of
365 such period the court shall discharge such person and dismiss the
366 proceedings against him. Discharge and dismissal under this
367 subsection shall be without court adjudication of guilt, but a
368 nonpublic record thereof shall be retained by the bureau solely
369 for the purpose of use by the courts in determining whether or
370 not, in subsequent proceedings, such person qualifies under this
371 subsection. Such discharge or dismissal shall not be deemed a
372 conviction for purposes of disqualifications or disabilities
373 imposed by law upon conviction of a crime, including the penalties
374 prescribed under this article for second or subsequent conviction,
375 or for any other purpose. Discharge and dismissal under this
376 subsection may occur only once with respect to any person; and
377 (2) Upon the dismissal of such person and discharge of
378 proceedings against him under paragraph (1) of this subsection, or
379 with respect to a person who has been convicted and adjudged
380 guilty of an offense under subsection (c) or (d) of Section
381 41-29-139, or for possession of narcotics, stimulants,
382 depressants, hallucinogens, marihuana, other controlled substances
383 or paraphernalia under prior laws of this state, such person, if
384 he had not reached his twenty-sixth birthday at the time of the
385 offense, may apply to the court for an order to expunge from all
386 official records, other than the nonpublic records to be retained
387 by the bureau under paragraph (1) of this subsection, all
388 recordation relating to his arrest, indictment, trial, finding of
389 guilty, and dismissal and discharge pursuant to this section. If
390 the court determines, after hearing, that such person was
391 dismissed and the proceedings against him discharged and that he

392 had not reached his twenty-sixth birthday at the time of the
393 offense, or that such person had satisfactorily served his
394 sentence or period of probation and parole, and that he had not
395 reached his twenty-sixth birthday at the time of the offense, it
396 shall enter such order. The effect of such order shall be to
397 restore such person, in the contemplation of the law, to the
398 status he occupied before such arrest or indictment. No person as
399 to whom such order has been entered shall be held thereafter under
400 any provision of any law to be guilty of perjury or otherwise
401 giving a false statement by reason of his failures to recite or
402 acknowledge such arrest, or indictment or trial in response to any
403 inquiry made of him for any purpose.

404 (e) Every person who has been or may hereafter be convicted
405 of a felony offense under Section 41-29-139 and sentenced under
406 Section 41-29-150(c) shall be under the jurisdiction of the
407 Mississippi Department of Corrections.

408 (f) It shall be unlawful for any person confined under the
409 provisions of subsection (b) or (c) of this section to escape or
410 attempt to escape from said institution, and upon conviction said
411 person shall be guilty of a felony and shall be imprisoned for a
412 term not to exceed two (2) years.

413 (g) It is the intent and purpose of the Legislature to
414 promote the rehabilitation of persons convicted of offenses under
415 the Uniform Controlled Substances Law.

416 **SECTION 3.** Section 47-7-33, Mississippi Code of 1972, is
417 amended as follows:

418 47-7-33. (1) When it appears to the satisfaction of any
419 circuit court or county court in the State of Mississippi having
420 original jurisdiction over criminal actions, or to the judge
421 thereof, that the ends of justice and the best interest of the
422 public, as well as the defendant, will be served thereby, such
423 court, in termtime or in vacation, shall have the power, after
424 conviction or a plea of guilty, except in a case where a death

425 sentence or life imprisonment is the maximum penalty which may be
426 imposed or where the defendant has been convicted of a felony on a
427 previous occasion in any court or courts of the United States and
428 of any state or territories thereof, to suspend the imposition or
429 execution of sentence, and place the defendant on probation as
430 herein provided or require rehabilitation for first-time
431 nonviolent offenders of the Implied Consent Law or first-time
432 offenders of violations of the Controlled Substances Law not
433 involving sale, distribution or manufacture, except that the court
434 shall not suspend the execution of a sentence of imprisonment
435 after the defendant shall have begun to serve such sentence. In
436 placing any defendant on probation, the court, or judge, shall
437 direct that such defendant be under the supervision of the
438 Department of Corrections.

439 (2) When any circuit or county court places an offender on
440 probation, the court shall give notice to the Mississippi
441 Department of Corrections within fifteen (15) days of the court's
442 decision to place the offender on probation. Notice shall be
443 delivered to the central office of the Mississippi Department of
444 Corrections and to the regional office of the department which
445 will be providing supervision to the offender on probation.

446 (3) When any circuit court or county court places a person
447 on probation in accordance with the provisions of this section and
448 that person is ordered to make any payments to his family, if any
449 member of his family whom he is ordered to support is receiving
450 public assistance through the State Department of Public Welfare,
451 the court shall order him to make such payments to the county
452 welfare officer of the county rendering public assistance to his
453 family, for the sole use and benefit of said family.

454 **SECTION 4.** Section 99-19-25, Mississippi Code of 1972, is
455 amended as follows:

456 99-19-25. The circuit courts and the county courts, in
457 misdemeanor cases, are hereby authorized to suspend a sentence and

458 to suspend the execution of a sentence, or any part thereof, on
459 such terms as may be imposed by the judge of the court. The court
460 shall sentence first-time nonviolent offenders of the Implied
461 Consent Law or first-time nonviolent offenders of the Controlled
462 Substances Law not involving sale, distribution or manufacture to
463 rehabilitation. Provided, the suspension of imposition or
464 execution of a sentence hereunder may not be revoked after a
465 period of five (5) years.

466 The justice courts, in misdemeanor cases, are hereby
467 authorized to suspend sentence and to suspend the execution of a
468 sentence, or any part thereof, on such terms as may be imposed by
469 the judge of the court. Provided, the suspension of imposition or
470 execution of a sentence hereunder may not be revoked after a
471 period of two (2) years. Provided, however, the justice courts in
472 cases arising under Sections 49-7-81, 49-7-95 and the Implied
473 Consent Law shall not suspend any fine.

474 **SECTION 5.** Section 63-11-30, Mississippi Code of 1972, is
475 brought forward as follows:

476 63-11-30. (1) It is unlawful for any person to drive or
477 otherwise operate a vehicle within this state who (a) is under the
478 influence of intoxicating liquor; (b) is under the influence of
479 any other substance which has impaired such person's ability to
480 operate a motor vehicle; (c) has an alcohol concentration of eight
481 one-hundredths percent (.08%) or more for persons who are above
482 the legal age to purchase alcoholic beverages under state law, or
483 two one-hundredths percent (.02%) or more for persons who are
484 below the legal age to purchase alcoholic beverages under state
485 law, in the person's blood based upon grams of alcohol per one
486 hundred (100) milliliters of blood or grams of alcohol per two
487 hundred ten (210) liters of breath as shown by a chemical analysis
488 of such person's breath, blood or urine administered as authorized
489 by this chapter; (d) is under the influence of any drug or
490 controlled substance, the possession of which is unlawful under

491 the Mississippi Controlled Substances Law; or (e) has an alcohol
492 concentration of four one-hundredths percent (.04%) or more in the
493 person's blood, based upon grams of alcohol per one hundred (100)
494 milliliters of blood or grams of alcohol per two hundred ten (210)
495 liters of breath as shown by a chemical analysis of such person's
496 blood, breath or urine, administered as authorized by this chapter
497 for persons operating a commercial motor vehicle.

498 (2) (a) Except as otherwise provided in subsection (3),
499 upon conviction of any person for the first offense of violating
500 subsection (1) of this section where chemical tests provided for
501 under Section 63-11-5 were given, or where chemical test results
502 are not available, such person shall be fined not less than Two
503 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
504 (\$1,000.00), or imprisoned for not more than forty-eight (48)
505 hours in jail or both; and the court shall order such person to
506 attend and complete an alcohol safety education program as
507 provided in Section 63-11-32. The court may substitute attendance
508 at a victim impact panel instead of forty-eight (48) hours in
509 jail. In addition, the Department of Public Safety, the
510 Commissioner of Public Safety or his duly authorized agent shall,
511 after conviction and upon receipt of the court abstract, suspend
512 the driver's license and driving privileges of such person for a
513 period of not less than ninety (90) days and until such person
514 attends and successfully completes an alcohol safety education
515 program as herein provided; provided, however, in no event shall
516 such period of suspension exceed one (1) year. Commercial driving
517 privileges shall be suspended as provided in Section 63-1-83.

518 The circuit court having jurisdiction in the county in which
519 the conviction was had or the circuit court of the person's county
520 of residence may reduce the suspension of driving privileges under
521 Section 63-11-30(2)(a) if the denial of which would constitute a
522 hardship on the offender, except that no court may issue such an
523 order reducing the suspension of driving privileges under this

524 subsection until thirty (30) days have elapsed from the effective
525 date of the suspension. Hardships shall only apply to first
526 offenses under Section 63-11-30(1), and shall not apply to second,
527 third or subsequent convictions of any person violating subsection
528 (1) of this section. A reduction of suspension on the basis of
529 hardship shall not be available to any person who refused to
530 submit to a chemical test upon the request of a law enforcement
531 officer as provided in Section 63-11-5. When the petition is
532 filed, such person shall pay to the circuit clerk of the court
533 where the petition is filed a fee of Fifty Dollars (\$50.00), which
534 shall be deposited into the State General Fund to the credit of a
535 special fund hereby created in the State Treasury to be used for
536 alcohol or drug abuse treatment and education, upon appropriation
537 by the Legislature. This fee shall be in addition to any other
538 court costs or fees required for the filing of petitions.

539 The petition filed under the provisions of this subsection
540 shall contain the specific facts which the petitioner alleges to
541 constitute a hardship and the driver's license number of the
542 petitioner. A hearing may be held on any petition filed under
543 this subsection only after ten (10) days' prior written notice to
544 the Commissioner of Public Safety, or his designated agent, or the
545 attorney designated to represent the state. At such hearing, the
546 court may enter an order reducing the period of suspension.

547 The order entered under the provisions of this subsection
548 shall contain the specific grounds upon which hardship was
549 determined, and shall order the petitioner to attend and complete
550 an alcohol safety education program as provided in Section
551 63-11-32. A certified copy of such order shall be delivered to
552 the Commissioner of Public Safety by the clerk of the court within
553 five (5) days of the entry of the order. The certified copy of
554 such order shall contain information which will identify the
555 petitioner, including, but not limited to, the name, mailing

556 address, street address, social security number and driver's
557 license number of the petitioner.

558 At any time following at least thirty (30) days of suspension
559 for a first offense violation of this section, the court may grant
560 the person hardship driving privileges upon written petition of
561 the defendant, if it finds reasonable cause to believe that
562 revocation would hinder the person's ability to:

563 (i) Continue his employment;

564 (ii) Continue attending school or an educational
565 institution; or

566 (iii) Obtain necessary medical care.

567 Proof of the hardship shall be established by clear and
568 convincing evidence which shall be supported by independent
569 documentation.

570 (b) Except as otherwise provided in subsection (3),
571 upon any second conviction of any person violating subsection (1)
572 of this section, the offenses being committed within a period of
573 five (5) years, such person shall be fined not less than Six
574 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
575 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
576 days nor more than one (1) year and sentenced to community service
577 work for not less than ten (10) days nor more than one (1) year.
578 The minimum penalties shall not be suspended or reduced by the
579 court and no prosecutor shall offer any suspension or sentence
580 reduction as part of a plea bargain. Except as may otherwise be
581 provided by paragraph (d) of this subsection, the Commissioner of
582 Public Safety shall suspend the driver's license of such person
583 for two (2) years. Suspension of a commercial driver's license
584 shall be governed by Section 63-1-83. Upon any second conviction
585 as described in this paragraph, the court shall ascertain whether
586 the defendant is married, and if the defendant is married shall
587 obtain the name and address of the defendant's spouse; the clerk
588 of the court shall submit this information to the Department of

589 Public Safety. Further, the commissioner shall notify in writing,
590 by certified mail, return receipt requested, the owner of the
591 vehicle and the spouse, if any, of the person convicted of the
592 second violation of the possibility of forfeiture of the vehicle
593 if such person is convicted of a third violation of subsection (1)
594 of this section. The owner of the vehicle and the spouse shall be
595 considered notified under this paragraph if the notice is
596 deposited in the United States mail and any claim that the notice
597 was not in fact received by the addressee shall not affect a
598 subsequent forfeiture proceeding.

599 For any second or subsequent conviction of any person under
600 this section, the person shall also be subject to the penalties
601 set forth in Section 63-11-31.

602 (c) Except as otherwise provided in subsection (3), for
603 any third or subsequent conviction of any person violating
604 subsection (1) of this section, the offenses being committed
605 within a period of five (5) years, such person shall be guilty of
606 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
607 nor more than Five Thousand Dollars (\$5,000.00), shall serve not
608 less than one (1) year nor more than five (5) years in the custody
609 of the Department of Corrections; provided, however, that for any
610 such offense which does not result in serious injury or death to
611 any person, any sentence of incarceration may be served in the
612 county jail rather than in the State Penitentiary at the
613 discretion of the circuit court judge. The minimum penalties
614 shall not be suspended or reduced by the court and no prosecutor
615 shall offer any suspension or sentence reduction as part of a plea
616 bargain. The law enforcement agency shall seize the vehicle
617 operated by any person charged with a third or subsequent
618 violation of subsection (1) of this section, if such convicted
619 person was driving the vehicle at the time the offense was
620 committed. Such vehicle may be forfeited in the manner provided
621 by Sections 63-11-49 through 63-11-53. Except as may otherwise be

622 provided by paragraph (e) of this subsection, the Commissioner of
623 Public Safety shall suspend the driver's license of such person
624 for five (5) years. The suspension of a commercial driver's
625 license shall be governed by Section 63-1-83.

626 (d) Except as otherwise provided in subsection (3), any
627 person convicted of a second violation of subsection (1) of this
628 section shall receive an in-depth diagnostic assessment, and if as
629 a result of such assessment is determined to be in need of
630 treatment of his alcohol and/or drug abuse problem, such person
631 shall successfully complete treatment of his alcohol and/or drug
632 abuse problem at a program site certified by the Department of
633 Mental Health. Such person shall be eligible for reinstatement of
634 his driving privileges upon the successful completion of such
635 treatment after a period of one (1) year after such person's
636 driver's license is suspended. Each person who receives a
637 diagnostic assessment shall pay a fee representing the cost of
638 such assessment. Each person who participates in a treatment
639 program shall pay a fee representing the cost of such treatment.

640 (e) Except as otherwise provided in subsection (3), any
641 person convicted of a third or subsequent violation of subsection
642 (1) of this section shall receive an in-depth diagnostic
643 assessment, and if as a result of such assessment is determined to
644 be in need of treatment of his alcohol and/or drug abuse problem,
645 such person shall enter an alcohol and/or drug abuse program
646 approved by the Department of Mental Health for treatment of such
647 person's alcohol and/or drug abuse problem. If such person
648 successfully completes such treatment, such person shall be
649 eligible for reinstatement of his driving privileges after a
650 period of three (3) years after such person's driver's license is
651 suspended.

652 (f) The Department of Public Safety shall promulgate
653 rules and regulations for the use of interlock ignition devices as
654 provided in Section 63-11-31 and consistent with the provisions

655 therein. Such rules and regulations shall provide for the
656 calibration of such devices and shall provide that the cost of the
657 use of such systems shall be borne by the offender. The
658 Department of Public Safety shall approve which vendors of such
659 devices shall be used to furnish such systems.

660 (3) (a) This subsection shall be known and may be cited as
661 Zero Tolerance for Minors. The provisions of this subsection
662 shall apply only when a person under the age of twenty-one (21)
663 years has a blood alcohol concentration two one-hundredths percent
664 (.02%) or more, but lower than eight one-hundredths percent
665 (.08%). If such person's blood alcohol concentration is eight
666 one-hundredths percent (.08%) or more, the provisions of
667 subsection (2) shall apply.

668 (b) Upon conviction of any person under the age of
669 twenty-one (21) years for the first offense of violating
670 subsection (1) of this section where chemical tests provided for
671 under Section 63-11-5 were given, or where chemical test results
672 are not available, such person shall have his driver's license
673 suspended for ninety (90) days and shall be fined Two Hundred
674 Fifty Dollars (\$250.00); and the court shall order such person to
675 attend and complete an alcohol safety education program as
676 provided in Section 63-11-32. The court may also require
677 attendance at a victim impact panel.

678 The court in the county in which the conviction was had or
679 the circuit court of the person's county of residence may reduce
680 the suspension of driving privileges under Section 63-11-30(2)(a)
681 if the denial of which would constitute a hardship on the
682 offender, except that no court may issue such an order reducing
683 the suspension of driving privileges under this subsection until
684 thirty (30) days have elapsed from the effective date of the
685 suspension. Hardships shall only apply to first offenses under
686 Section 63-11-30(1), and shall not apply to second, third or
687 subsequent convictions of any person violating subsection (1) of

688 this section. A reduction of suspension on the basis of hardship
689 shall not be available to any person who refused to submit to a
690 chemical test upon the request of a law enforcement officer as
691 provided in Section 63-11-5. When the petition is filed, such
692 person shall pay to the circuit clerk of the court where the
693 petition is filed a fee of Fifty Dollars (\$50.00), which shall be
694 deposited into the State General Fund to the credit of a special
695 fund hereby created in the State Treasury to be used for alcohol
696 or drug abuse treatment and education, upon appropriation by the
697 Legislature. This fee shall be in addition to any other court
698 costs or fees required for the filing of petitions.

699 The petition filed under the provisions of this subsection
700 shall contain the specific facts which the petitioner alleges to
701 constitute a hardship and the driver's license number of the
702 petitioner. A hearing may be held on any petition filed under
703 this subsection only after ten (10) days' prior written notice to
704 the Commissioner of Public Safety, or his designated agent, or the
705 attorney designated to represent the state. At such hearing, the
706 court may enter an order reducing the period of suspension.

707 The order entered under the provisions of this subsection
708 shall contain the specific grounds upon which hardship was
709 determined, and shall order the petitioner to attend and complete
710 an alcohol safety education program as provided in Section
711 63-11-32. A certified copy of such order shall be delivered to
712 the Commissioner of Public Safety by the clerk of the court within
713 five (5) days of the entry of the order. The certified copy of
714 such order shall contain information which will identify the
715 petitioner, including, but not limited to, the name, mailing
716 address, street address, social security number and driver's
717 license number of the petitioner.

718 At any time following at least thirty (30) days of suspension
719 for a first offense violation of this section, the court may grant
720 the person hardship driving privileges upon written petition of

721 the defendant, if it finds reasonable cause to believe that
722 revocation would hinder the person's ability to:

723 (i) Continue his employment;

724 (ii) Continue attending school or an educational
725 institution; or

726 (iii) Obtain necessary medical care.

727 Proof of the hardship shall be established by clear and
728 convincing evidence which shall be supported by independent
729 documentation.

730 (c) Upon any second conviction of any person under the
731 age of twenty-one (21) years violating subsection (1) of this
732 section, the offenses being committed within a period of five (5)
733 years, such person shall be fined not more than Five Hundred
734 Dollars (\$500.00) and shall have his driver's license suspended
735 for one (1) year.

736 (d) For any third or subsequent conviction of any
737 person under the age of twenty-one (21) years violating subsection
738 (1) of this section, the offenses being committed within a period
739 of five (5) years, such person shall be fined not more than One
740 Thousand Dollars (\$1,000.00) and shall have his driver's license
741 suspended until he reaches the age of twenty-one (21) or for two
742 (2) years, whichever is longer.

743 (e) Any person under the age of twenty-one (21) years
744 convicted of a second violation of subsection (1) of this section,
745 may have the period that his driver's license is suspended reduced
746 if such person receives an in-depth diagnostic assessment, and as
747 a result of such assessment is determined to be in need of
748 treatment of his alcohol and/or drug abuse problem and
749 successfully completes treatment of his alcohol and/or drug abuse
750 problem at a program site certified by the Department of Mental
751 Health. Such person shall be eligible for reinstatement of his
752 driving privileges upon the successful completion of such
753 treatment after a period of six (6) months after such person's

754 driver's license is suspended. Each person who receives a
755 diagnostic assessment shall pay a fee representing the cost of
756 such assessment. Each person who participates in a treatment
757 program shall pay a fee representing the cost of such treatment.

758 (f) Any person under the age of twenty-one (21) years
759 convicted of a third or subsequent violation of subsection (1) of
760 this section shall complete treatment of an alcohol and/or drug
761 abuse program at a site certified by the Department of Mental
762 Health.

763 (g) The court shall have the discretion to rule that a
764 first offense of this subsection by a person under the age of
765 twenty-one (21) years shall be nonadjudicated. Such person shall
766 be eligible for nonadjudication only once. The Department of
767 Public Safety shall maintain a confidential registry of all cases
768 which are nonadjudicated as provided in this paragraph. A judge
769 who rules that a case is nonadjudicated shall forward such ruling
770 to the Department of Public Safety. Judges and prosecutors
771 involved in implied consent violations shall have access to the
772 confidential registry for the purpose of determining
773 nonadjudication eligibility. A record of a person who has been
774 nonadjudicated shall be maintained for five (5) years or until
775 such person reaches the age of twenty-one (21) years. Any person
776 whose confidential record has been disclosed in violation of this
777 paragraph shall have a civil cause of action against the person
778 and/or agency responsible for such disclosure.

779 (4) In addition to the other penalties provided in this
780 section, every person refusing a law enforcement officer's request
781 to submit to a chemical test of his breath as provided in this
782 chapter, or who was unconscious at the time of a chemical test and
783 refused to consent to the introduction of the results of such test
784 in any prosecution, shall suffer an additional suspension of
785 driving privileges as follows:

786 The Commissioner of Public Safety or his authorized agent
787 shall suspend the driver's license or permit to drive or deny the
788 issuance of a license or permit to such person as provided for
789 first, second and third or subsequent offenders in subsection (2)
790 of this section. Such suspension shall be in addition to any
791 suspension imposed pursuant to subsection (1) of Section 63-11-23.
792 The minimum suspension imposed under this subsection shall not be
793 reduced and no prosecutor is authorized to offer a reduction of
794 such suspension as part of a plea bargain.

795 (5) Every person who operates any motor vehicle in violation
796 of the provisions of subsection (1) of this section and who in a
797 negligent manner causes the death of another or mutilates,
798 disfigures, permanently disables or destroys the tongue, eye, lip,
799 nose or any other limb, organ or member of another shall, upon
800 conviction, be guilty of a separate felony for each such death,
801 mutilation, disfigurement or other injury and shall be committed
802 to the custody of the State Department of Corrections for a period
803 of time of not less than five (5) years and not to exceed
804 twenty-five (25) years for each such death, mutilation,
805 disfigurement or other injury, and the imprisonment for the second
806 or each subsequent conviction, in the discretion of the court,
807 shall commence either at the termination of the imprisonment for
808 the preceding conviction or run concurrently with the preceding
809 conviction. Any person charged with causing the death of another
810 as described in this subsection shall be required to post bail
811 before being released after arrest.

812 (6) Upon conviction of any violation of subsection (1) of
813 this section, the trial judge shall sign in the place provided on
814 the traffic ticket, citation or affidavit stating that the person
815 arrested either employed an attorney or waived his right to an
816 attorney after having been properly advised. If the person
817 arrested employed an attorney, the name, address and telephone
818 number of the attorney shall be written on the ticket, citation or

819 affidavit. The judge shall cause a copy of the traffic ticket,
820 citation or affidavit, and any other pertinent documents
821 concerning the conviction, to be sent to the Commissioner of
822 Public Safety. A copy of the traffic ticket, citation or
823 affidavit and any other pertinent documents, having been attested
824 as true and correct by the Commissioner of Public Safety, or his
825 designee, shall be sufficient proof of the conviction for purposes
826 of determining the enhanced penalty for any subsequent convictions
827 of violations of subsection (1) of this section.

828 (7) Convictions in other states of violations for driving or
829 operating a vehicle while under the influence of an intoxicating
830 liquor or while under the influence of any other substance that
831 has impaired the person's ability to operate a motor vehicle
832 occurring after July 1, 1992, shall be counted for the purposes of
833 determining if a violation of subsection (1) of this section is a
834 first, second, third or subsequent offense and the penalty that
835 shall be imposed upon conviction for a violation of subsection (1)
836 of this section.

837 (8) For the purposes of determining how to impose the
838 sentence for a second, third or subsequent conviction under this
839 section, the indictment shall not be required to enumerate
840 previous convictions. It shall only be necessary that the
841 indictment state the number of times that the defendant has been
842 convicted and sentenced within the past five (5) years under this
843 section to determine if an enhanced penalty shall be imposed. The
844 amount of fine and imprisonment imposed in previous convictions
845 shall not be considered in calculating offenses to determine a
846 second, third or subsequent offense of this section.

847 (9) Any person under the legal age to obtain a license to
848 operate a motor vehicle convicted under this section shall not be
849 eligible to receive such license until the person reaches the age
850 of eighteen (18) years.

851 (10) Suspension of driving privileges for any person
852 convicted of violations of Section 63-11-30(1) shall run
853 consecutively.

854 (11) The court may order the use of any ignition interlock
855 device as provided in Section 63-11-31.

856 **SECTION 6.** This act shall take effect and be in force from
857 and after July 1, 2006.